HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Jail Appeal No. 76 of 2005

Date of Decision : 4th October, 2005

A.F.R. (Approved for reporting)

~~Not approved for reporting.~~

Date Initial of Judge.

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Jail Appeal No. 76 of 2005

Mahadev Pant
S/o Kalu Dutt Pant
R/o Ward No. 7 HalduKhal
Thana – Chadoni Dodhara
Distt. – Kanchanpur (Nepal) ... Appellant.

Versus

State of Uttaranchal ... Respondent

Shri B.P.S.Mer, Amicus Curie for the appellant,
Shri D.K. Sharma, learned G.A. for the State

JUDGMENT

Hon'ble J.C.S.Rawat, J.

This criminal appeal was received from Jail.

1. The appellant, Mahadev Pant was convicted and sentenced to undergo RI for ten years under Section 20 of the N.D.P.S. Act (for short 'Act') and to pay fine of Rs. 1,00,000/- (Rupees one lac only) by the learned Special Sessions Judge, Champawat in Special S.T. No. 2/2003. In default of payment of fine the appellant would undergo three years S.I. imprisonment.

2. Briefly stated, the prosecution case is that on 06.11.2003, S.O. Vipin Chandra Pant alongwith S.I. K.P. Singh was on patrolling duty at about 11:50 AM. When the police patrolling party were coming from the Dhanus Pul towards the Garigoat they saw one person coming from the side of the jungle on foot near a Nala in the jungle. On seeing the police party, he started to go back to the jungle. On

seeing so, the police party had suspicion on the said person. The police immediately intercepted the appellant at 2:00 PM and asked him as to why he was running behind. The apprehended person stated his name as Mahadev Pant S/o Kalu Datt Pant, R/o Ward No. 7 HalduKhal, Thana Chadoni Dodhara, Distt. – Kanchanpur and he said that he had 2 kgs of charas in his possession so he was going back. On being asked him whether he wanted to be searched before a Gazetted Officer or a Magistrate, the appellant stated that search may be taken by the raiding party themselves. In this connection, a consent letter Ex. Ka.-1 was written by the appellant. He had also stated to the raiding party that they may take his search and he had a full faith on them. The place where the appellant was apprehended was a jungle where no public witnesses could be obtained and as such, the police party themselves took the search of the appellant. On conducting the search of the appellant, they found the charas which was kept in the pockets of his underwear. Thereafter, the said underwear and the contraband were taken into possession. It was at about 2 kgs. Contraband having in 10 bundles. The appellant was arrested at the spot and the said charas was taken into custody by the police. The recovery memo was prepared which is Ex. Ka-2 and 100 grams charas was taken for chemical examination out of 2 Kgs. The said charas was sent to the chemical examiner who had reported that the contraband is the charas. The Investigation was taken by the S.O. himself. After the investigation, he

submitted the chargesheet before the court. The Trail Court charged the appellant under Section 18/20 Act. The appellant denied the charges levelled against him and claimed the trial.

3. In order to prove the case, the prosecution has produced S.O. Vipin Chandra Pant PW1, S.I. K.P.Singh PW2, S.O.-C.S. Yadav PW3 and Head Constable Hansraj Singh PW4.

4. The statement of the accused was recorded under Section 313 Cr.P.C. and the accused denied the entire prosecution evidence and he further stated that he was arrested on 06.11.2003. He has further stated that he was beaten by the police and the police had obtained his signature on the blank paper.

5. After appraisal of the material on record, the learned Trail Court found the appellant guilty under Section 18/20 Act and convicted and sentenced the appellant as mentioned above.

6. I have heard Sri B.P.S. Mer, Amicus Curie for the appellant, Shri D.K. Sharma, G.A. and perused the record.

7. The prosecution had adduced the evidence of S.O. Vipin Chandra Pant PW1, who supported the prosecution version. The evidence of S.I. K.P.Singh PW2, S.O.-C.S. Yadav PW3 and Head Constable

Hansraj Singh PW4 have also corroborated the evidence of Vipin Chandra Pant PW1.

8. The learned Amicus Curie assailed the conclusions of the Trail Court and submitted that the mandatory provision of Section 50 of the Act had not been complied with. The learned G.A. refuted the contention. The prosecution witnesses had categorically stated in their evidence that the police party was on patrol duty and they found that one person was coming from jungle near the place of incident. When the police intercepted the appellant, he informed the police that he had charas. Immediately, thereafter S.I. Vipin Chandra Pant asked him whether he wanted to be searched before a Gazetted Officer or a Magistrate, the appellant requested S.I. Vipin Chandra Pant that he did not want to be searched before the Gazetted Officer or a Magistrate. He might be searched by the police party and he had full faith upon them. The appellant gave a consent letter Ex. Ka-1 to the raiding party wherein he had stated that :-

मुझे आपके ऊपर पूरा भरोसा है। मैं तलासी के लिए किसी मजिस्ट्रेट व राज पत्रीत अधिकारी के पास नहीं जाना चाहता। मेरी तलासी आप ही लेलें।

8. All the prosecution witness had categorically stated that the appellant was made aware of his valuable rights being searched before a Gazetted Officer or a Magistrate and when he declined the offer the police party made a search of the appellant. Ex. Ka-2 and 3 is the memo of arrest and recovery. The recovery memo of the contraband

was prepared at the spot which itself reveals that the compliance of the above mandatory requirement was informed to the appellant. This fact also corroborates the prosecution evidence on this point. However, if the empowered officer without any prior information as contemplated under Section 42 Act makes a search or causes arrest of a person during the raid that was a sudden search, the provision of Section 50 is not attracted. As soon as the appellant had the information after the arrest that he got the contraband, the police has to immediately inform his right in accordance with the provision of Section 50 Act. In the instant case, the police had informed the appellant about his right where a sudden arrest had been made and no prior information was with the police party that the appellant would be carrying contraband charas at the place of occurrence. the interception of the appellant on suspicion was unexpected and per chance and if out of suspicion he had been searched or if started search then immediately he came to know that he was possessing the contraband. The police informed his right and as such, the compliance of Section 50 Act is complete. The evidence of the prosecution on this point is cogent and credible. The learned Trail Court has rightly held that the compliance of Section 50 Act had been made in this matter. I do not find any substance in the submission made by the learned Amicus Curie that the non-compliance of the provision 50 Act was not done.

9. It was further contended by the learned Amicus Curie that the requirement of Section 57 Act was not compliance with in as much as full report of the particular of arrest and seizure was not sent to the superior officer within 48 hours of the arrest. The prosecution evidence clearly reveals that the telephonic communication was made to the superior officer. The prosecution witnesses had not been cross examined on this point. The learned Amicus Curie admitted that there is no cross examination on this point. It is further revealed from the perusal of the record that on the same day the S.O. was appointed as the Investigating Officer and he submitted the case diary before the Special Sessions Judge. Meaning thereby, the factum of information submitted to the superior officer is further corroborated by this fact that the S.O. immediately started the investigation in the matter on 6.11.2003 itself. Moreover, the provision of Section 57 of the Act is not mandatory and under the similar facts and circumstances the submission on behalf of the appellant was found untenable by the Hon'ble Apex Court in the case of **Rangi Ram Vs. State of Haryana JT 2000 (5) SC 494** wherein it has been held that the provision is not mandatory and its non-compliance by itself cannot vitiate the conviction of the appellant.

10. I am completely in agreement with the findings of the trial court in this regard. The submission made by the Amicus Curier in this regard had no force.

11. It was further pointed out by the learned Amicus Curie that no public witnesses of the arrest and seizure were taken by the police and this also creates a doubt in the prosecution version and the entire evidence of the prosecution become untenable. Learned G.A. refuted the contention. Perusal of the prosecution evidence reveals that the arrest was made near the jungle where the public witnesses could not have been procured by the police. If the witnesses could not be procured, then it can not be said that the recovery becomes doubtful. The perusal of the evidence of the prosecution reveals that the prosecution witness had stated in his evidence that the place where the accused/appellant was apprehended was a lonely place situated in the jungle and no public witness was available. The police party themselves took the search of the appellant. There is nothing in the evidence of the prosecution witness which may, in any way, assail their reliability on this point. The evidence of the prosecution proved beyond doubt, the fact of recovery of contraband from the possession of the appellant at the time of the arrest at about 2:00 PM on 06.11.2003. The arrest had also been admitted by the defence in his evidence recorded under Section 313 Cr.P.C. He had stated in his statement that he was taken into custody in the morning of 06.11.2003. The submission made by the learned Amicus Curie has no force and the convicted of the appellant cannot be said to be bad on this score also.

12. The learned Amicus Curiae further submitted that the police had not weighted the recovered contraband and they had only assessed it to be 2 kgs. 100 gm. Out of that was sent to chemical examiner. The learned G.A. contended that the quantity was so much that it can clearly reveal that it is about 2 kgs. The perusal of the record reveals that the evidence of the prosecution categorically stated that it was at about 2 kgs. Of contraband. The prosecution had not been cross examined on this point. The learned Amicus Curie admitted that no cross examination had been made on this point. It was further pointed out by the learned G.A. that 100 gram contraband was sent to the chemical examiner and the chemical examiner found it 100 gram exactly. The prosecution evidence clearly assessed it to be 2 kgs. This fact has not been denied in the cross examination. As such, it cannot be said that 2 kgs. Contraband was not recovered. The said contraband was produced before the court below. The weight of the said contraband was not challenged by the counsel of the appellant before the Trail Court that it was not 2 kgs. Therefore, the submission advanced by the learned Amicus Curiae has no force.

13. In view of the above discussion, I am of the view that the learned trial court has rightly found the appellant guilty u/s 18/20 of the N.D.P.S. Act and no interference need to be required by this court. The conviction and sentence awarded by the

trial court are maintained. The appeal lacks merits and is dismissed.

14. Let a copy of this judgment alongwith the record of the case be sent to the trial court for needful compliance under intimation to this court within four months positively.

(J.C.S.RAWAT, J.)

October 04, 2005
Shiv